

SENATE BILL NO. 380

INTRODUCED BY PINSONEAULT, B. BROWN

BY REQUEST OF THE SENATE JUDICIARY COMMITTEE

IN THE SENATE

FEBRUARY 19, 1987                   INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

FEBRUARY 20, 1987                   COMMITTEE RECOMMEND BILL  
DO PASS. REPORT ADOPTED.

FEBRUARY 21, 1987                   PRINTING REPORT.

FEBRUARY 23, 1987                   SECOND READING, DO PASS AS AMENDED.

FEBRUARY 24, 1987                   ENGROSSING REPORT.

FEBRUARY 25, 1987                   THIRD READING, PASSED.  
AYES, 50; NOES, 0.

TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 3, 1987                   INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

MARCH 27, 1987                   COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

MARCH 28, 1987                   SECOND READING, CONCURRED IN AS  
AMENDED.

MARCH 30, 1987                   THIRD READING, CONCURRED IN.  
AYES, 95; NOES, 2.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 3, 1987

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 4, 1987

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

1 *Alternate* BILL NO. *380*  
 2 INTRODUCED BY *Lin Sen would Bob Brown*  
 3 BY REQUEST OF THE SENATE JUDICIARY COMMITTEE  
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE LAW  
 6 RELATING TO PRODUCTS LIABILITY ACTIONS; DEFINING TWO  
 7 DEFENSES AVAILABLE IN A PRODUCTS LIABILITY CASE; AND  
 8 PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
 9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Strict liability of seller of product for  
 12 physical harm to user or consumer. (1) As used in this  
 13 section, "seller" means a manufacturer, wholesaler, or  
 14 retailer.

15 (2) A person who sells a product in a defective  
 16 condition unreasonably dangerous to a user or consumer or to  
 17 the property of a user or consumer is liable for physical  
 18 harm caused by the product to the ultimate user or consumer  
 19 or to his property if:

20 (a) the seller is engaged in the business of selling  
 21 such a product; and

22 (b) the product is expected to and does reach the user  
 23 or consumer without substantial change in the condition in  
 24 which it is sold.

25 (3) The provisions of subsection (2) apply even if:

1 (a) the seller exercised all possible care in the  
 2 preparation and sale of his product; and

3 (b) the user or consumer did not buy the product from  
 4 or enter into any contractual relation with the seller.

5 (4) Except as provided in this subsection,  
 6 contributory negligence is not a defense to the liability of  
 7 a seller, based on strict liability in tort, for personal  
 8 injury or property damage caused by a defectively  
 9 manufactured or defectively designed product. A seller named  
 10 as a defendant in an action based on strict liability in  
 11 tort for damages to person or property caused by a  
 12 defectively designed or defectively manufactured product may  
 13 assert the following affirmative defenses against the user  
 14 or consumer, the legal representative of the user or  
 15 consumer, or any person claiming damages by reason of injury  
 16 to the user or consumer:

17 (a) The user or consumer of the product discovered or  
 18 in the exercise of ordinary care should have discovered the  
 19 defect and was aware or in the exercise of ordinary care  
 20 should have been aware of the danger and unreasonably made  
 21 use of the product and was injured by it.

22 (b) The product was misused by the user or consumer  
 23 and such misuse caused or contributed to the injury.

24 (5) The affirmative defenses referred to in subsection  
 25 (4) mitigate or bar recovery and must be applied in



LC 1797/01

- 1 accordance with the principles of comparative negligence set
- 2 forth in 27-1-702.

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

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21 use of the product and was injured by it.

22 (b) The product was misused by the user or consumer  
23 and such misuse caused or contributed to the injury.

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25 (4) mitigate or bar recovery and must be applied in

LC 1797/01

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-End-

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12    physical harm to user or consumer. (1) As used in this  
13    section, "seller" means a manufacturer, wholesaler, or  
14    retailer.  
15       (2) A person who sells a product in a defective  
16    condition unreasonably dangerous to a user or consumer or to  
17    the property of a user or consumer is liable for physical  
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24    which it is sold.  
25       (3) The provisions of subsection (2) apply even if:

1                   (a) the seller exercised all possible care in the  
2    preparation and sale of his product; and  
3                   (b) the user or consumer did not buy the product from  
4    or enter into any contractual relation with the seller.  
5                   (4) Except as provided in this subsection,  
6    contributory negligence is not a defense to the liability of  
7    a seller, based on strict liability in tort, for personal  
8    injury or property damage caused by a defectively  
9    manufactured or defectively designed product. A seller named  
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19    defect and was aware or in the exercise of ordinary care  
20    should have been aware of the danger and unreasonably made  
21    use of the product and was injured by it.  
22       (b) The product was UNFORESEEABLY misused by the user  
23    or consumer and such misuse caused or contributed to the  
24    injury.  
25       (5) The affirmative defenses referred to in subsection



SB 0380/02

1 (4) mitigate or bar recovery and must be applied in  
2 accordance with the principles of comparative negligence set  
3 forth in 27-1-702.

-End-



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21 such a product; and

22 (b) the product is expected to and does reach the user  
23 or consumer without substantial change in the condition in  
24 which it is sold.

25 (3) The provisions of subsection (2) apply even if:

1 (a) the seller exercised all possible care in the  
2 preparation and sale of his product; and

3 (b) the user or consumer did not buy the product from  
4 or enter into any contractual relation with the seller.

5 ~~(4) THE REQUIREMENT IN SUBSECTION (2)(B) THAT THE~~  
6 ~~PRODUCT IS EXPECTED TO AND DOES REACH THE USER OR CONSUMER~~  
7 ~~WITHOUT SUBSTANTIAL CHANGE IN THE CONDITION IN WHICH THE~~  
8 ~~PRODUCT IS SOLD DOES NOT APPLY TO AN ACTION BASED UPON~~  
9 ~~IMPROPER PRODUCT DESIGN. SUBSECTION (2)(B) DOES NOT APPLY TO~~  
10 ~~A CLAIM FOR RELIEF BASED UPON IMPROPER PRODUCT DESIGN.~~

11 ~~(4)(5)~~ Except as provided in this subsection,  
12 contributory negligence is not a defense to the liability of  
13 a seller, based on strict liability in tort, for personal  
14 injury or property damage caused by a defectively  
15 manufactured or defectively designed product. A seller named  
16 as a defendant in an action based on strict liability in  
17 tort for damages to person or property caused by a  
18 defectively designed or defectively manufactured product may  
19 assert the following affirmative defenses against the user  
20 or consumer, the legal representative of the user or  
21 consumer, or any person claiming damages by reason of injury  
22 to the user or consumer:

23 (a) The user or consumer of the product discovered or  
24 in the exercise of ordinary care should have discovered the  
25 defect and was aware or in the exercise of ordinary care

1 ~~should-have-been-aware-of-the-danger~~ OR THE DEFECT WAS OPEN  
2 AND OBVIOUS and THE USER OR CONSUMER unreasonably made use  
3 of the product and was injured by it.

4 (b) The product was UNFORESEEABLY UNREASONABLY misused  
5 by the user or consumer and such misuse caused or  
6 contributed to the injury.

7 ~~(5)(6)~~ The affirmative defenses referred to in  
8 subsection ~~(4)~~ (5) mitigate or bar recovery and must be  
9 applied in accordance with the principles of comparative  
10 negligence set forth in 27-1-702.

-End-

STANDING COMMITTEE REPORT

HOUSE

MARCH 26, 1987

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL NO. 380

- do pass
- do not pass
- be concurred in
- be not concurred in
- as amended
- statement of intent attached

*E. L. Long*

Chairman

1. Title, line 6.

Strike: ";"

Insert: "AND"

2. Title, lines 7 and 8.

Strike: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 2, line 5.

Following: line 4

Insert: "(4) The requirement in subsection (2)(b) that the product is expected to and does reach the user or consumer without substantial change in the condition in which the product is sold does not apply to an action based upon improper product design."

Renumber: subsequent subsections

4. Page 2, lines 17 and 18.

Strike: "or in the exercise of ordinary care should have discovered"

5. Page 2, lines 19 and 20.

Strike: "and was aware or in the exercise of ordinary care should have been aware of the danger"

Insert: "or the defect was open and obvious"

6. Page 2, line 20.

Following: "and"

Insert: "the user or consumer"

7. Page 2, line 22.

Strike: "UNFORESEEABLY"

Insert: "unreasonably"

8. Page 3, line 1.

Strike: "(4)"

Insert: "(5)"

*MAH*

THIRD reading copy (BLUE color)

REP. ADDY WILL CARRY THE BILL!

*FF*

# COMMITTEE OF THE WHOLE AMENDMENT

HOUSE

3-28-87

DATE

19:40

TIME

MR. CHAIRMAN: I MOVE TO AMEND SB 380

3rd reading copy ( blue ) as follows:  
Color

AMENDING THE HOUSE JUDICIARY STANDING COMMITTEE REPORT  
DATED 3-26-87, WHICH AMENDED SB 380

- 1) Amending Instruction No. 3, line 3 (the inserted material).  
Following: "(4)"  
Strike: "The requirement in" through "design" (all of the subsection)  
Insert: "Subsection 2 (b) does not apply to a claim for relief based upon improper product design"

ADOPT

REJECT

*Ramirez*